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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

RENEÉ POLK JOHNSON, Plaintiff and Respondent, v. DIEM T. NGUYEN, Defendant and Appellant.	G055960 (Super. Ct. No. 30-2017-00955741) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Timothy J. Stafford, Judge. Affirmed.

Diem T. Nguyen, in pro. per., for Defendant and Appellant.

Atkinson, Andelson, Loya, Ruud & Romo, Ernest L. Bell and Jacquelyn T. Morenz for Plaintiff and Respondent.

* * *

Defendant and appellant Diem T. Nguyen, a designated vexatious litigant, appeals from the issuance of a restraining order pursuant to Code of Civil Procedure sections 527.6 and 527.9 in favor of plaintiff and respondent Reneé Polk Johnson. The restraining order prohibits defendant from harassing, stalking or molesting plaintiff and requiring defendant to stay at least 100 yards away from plaintiff. Defendant contends the restraining order improperly infringed on her free speech rights under the United States and California Constitutions and plaintiff's fear was irrational.

The evidence supports issuance of the restraining order and the order did not improperly infringe defendant's constitutional rights. Therefore, we affirm the order.

CALIFORNIA RULES OF COURT VIOLATIONS AND DEFECTIVE BRIEFS

California Rules of Court, rule 8.204(a)(1)(C) (all further references to rules are to the California Rules of Court) requires "any reference to a matter in the record" to be supported by a citation to its location. These citations must be included in both the summary of facts and the argument portion of the brief even if duplicative. (*City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239, fn. 16.) Defendant failed to include any record references in her abbreviated statement of facts. (*Villanueva v. Fidelity National Title Co.* (2018) 26 Cal.App.5th 1092, 1110-111, fn. 8 ["When a brief fails to refer to the record in connection with the points raised on appeal, the appellate court may treat those points as having been waived [citations], ignore unsupported contentions [citation], or strike portions of the brief entirely [citation.]"].)

Rule 8.204(a)(2)(C) requires defendant to "[p]rovide a summary of the significant facts." Defendant failed to include most of the material facts necessary for us to decide this appeal. We were required to rely on the respondent's brief and our own examination of the record. (*Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 738 ["'It is neither practical nor appropriate for us to comb the record on [a party's] behalf'"].)

The fact defendant is appearing in propria persona makes no difference. A self-represented litigant is not entitled to "special treatment" (*Stebley v. Litton Loan Servicing, LLP* (2011) 202 Cal.App.4th 522, 524) but is held to the same standards as a party represented by counsel (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247 [appellant's issues forfeited due to defects in opening brief]). We could consider defendant's arguments forfeited (*Clark v. Superior Court* (2011) 196 Cal.App.4th 37, 53) but to the extent we are able we will consider them on the merits unless otherwise stated below.

Finally, defendant makes claims not included within the argument part of her briefs. For example, in the "Statement of the Case" she contends the court admitted inadmissible hearsay and prejudicial irrelevant material. Each point must have a discrete section with a separate heading and must be supported by reasoned legal argument and authority. (*Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1294 ["we do not consider all of the loose and disparate arguments that are not clearly set out in a heading and supported by reasoned legal argument"]; rule 8.204(a)(1)(B) [each point must be separately headed and supported by argument and authority if available].) Any contentions not included within the argument section are forfeited and we do not consider them. In addition, if defendant intended to make any other arguments or claims, they are forfeited for lack of separate headings, authority, or reasoned legal argument.

FACTS AND PROCEDURAL HISTORY

Defendant's three children were removed from her custody in March 2016 due to allegations of neglect and child abuse.[1] The children were placed with defendant's sister (sister), who was designated as the holder of Lucas's education rights.

[1] In affirming the judgment removing children from defendant's custody, we found there was substantial evidence to support the juvenile court's finding mother had mental health problems, causing her to neglect the children and causing her oldest child serious emotional damage. (*In re Lucas N.* (Sept. 12, 2017, G054470) [nonpub. opn.], p. 2.)

Sister enrolled one of defendant's children (student) at the elementary school where plaintiff serves as principal. Sister advised plaintiff defendant had no custodial rights, including educational rights, over student and student should not be released to defendant. Subsequently, defendant's parental rights were terminated.

The dependency court had ordered an individualized education plan (IEP) assessment for student. After student was enrolled at the school defendant attempted to contact plaintiff several times by phone and e-mail, asking to attend the IEP assessment. Plaintiff advised defendant by e-mail that defendant had no educational or custodial rights to student and could not be present. Nevertheless defendant continued to contact plaintiff.

In May 2016 plaintiff received a subpoena issued by defendant[2] to appear at a hearing on June 6 in the dependency action. When plaintiff appeared on the designated date she learned no hearing was scheduled. She spoke with defendant's attorney who had no knowledge of defendant's subpoena and apologized. Plaintiff became "terrified" she had been "lured to the courthouse" and sought security to walk her to her car.

Defendant also filed a federal court action against plaintiff and several other defendants for approximately 20 causes of action including defamation, fraud, infliction of emotional distress, assault, battery, false imprisonment, and violation of federal and state civil rights, based on essentially the same facts as those underlying defendant's claims against plaintiff here.[3]

In November 2017, defendant began standing at the entry to the walkway at the school with a sign stating plaintiff and other school employees had "manipulated and

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[2] The subpoena showed defendant was in pro. per. However on the date plaintiff appeared, defendant was represented by a public defender. It is unclear when the public defender was appointed.

[3] The actual complaint is not in the record. Defendant included a copy of her pre-filing order and attachments.

kidnapped" child and another sign stating plaintiff "bullie[d], manipulate[d], terrorize[d] and kidnappe[d]" child. Defendant has continued to stand at the school at the only ingress and egress virtually every day. She also filmed plaintiff coming from and going to her car. Plaintiff testified defendant's behavior terrified her and caused her "significant emotional distress." Further, plaintiff received numerous calls from parents asking about defendant's presence and signs, "significantly impact[ing]" plaintiff's work.

Plaintiff filed a request for civil harassment restraining orders seeking to prevent defendant from harassing her and coming within 1000 yards of plaintiff. In the application plaintiff stated defendant had "untreated mental health issues" and noted she was concerned defendant's "behavior will escalate and could potentially be more dangerous." She also stated defendant believed plaintiff was "responsible for [defendant's] children being taken away from her."

The court issued a temporary restraining order prohibiting defendant from harassing, intimidating stalking, molesting, threatening, abusing, or disturbing the peace of plaintiff or contacting her in any manner, ordering defendant to stay at least 100 yards away from plaintiff. The court set a hearing on plaintiff's order to show cause (OSC).

At the OSC hearing, after hearing testimony of both plaintiff and defendant and another school employee and admitting five exhibits offered by plaintiff, the court granted the restraining order with an expiration date of January 10, 2021.

DISCUSSION

1. Standard of Review

We review issuance of a civil harassment restraining order for abuse of discretion. (*Parisi v. Mazzaferro* (2016) 5 Cal.App.5th 1219, 1226 (*Parisi*).) In applying the abuse of discretion standard we consider whether there is substantial evidence to support the order, viewing the evidence in the light most favorable to plaintiff. (*City of Glendale v. Marcus Cable Associates, LLC* (2014) 231 Cal.App.4th 1359, 1385.) We do not reweigh evidence or evaluate witness credibility. (*Ibid*.)

Additional analysis is required when a restraining order allegedly violates constitutional rights of expression. (*Parisi, supra*, 5 Cal.App.5th at p. 1226.) "'"[F]acts that are germane to" the First Amendment analysis "must be sorted out and reviewed de novo, independently of any previous determinations by the trier of fact." [Citation.] And "the reviewing court must '"examine for [itself] the statements in issue and the circumstances under which they were made to see . . . whether they are of a character which the principles of the First Amendment . . . protect."'" (*Ibid*.)

2. General Principles of Civil Harassment Restraining Orders

Under Code of Civil Procedure section 527.6, subdivision (a)(1) a victim of harassment may seek a temporary restraining order and an injunction to prohibit harassment. "'The elements of unlawful harassment, as defined by the language in section 527.6, are as follows: (1) "a knowing and willful course of conduct" entailing a "pattern" or "a series of acts over a period of time, however short, evidencing a continuity of purpose"; (2) "directed at a specific person"; (3) "[that] seriously alarms, annoys, or harasses the person"; (4) "[that] serves no legitimate purpose"; (5) [that] "would cause a reasonable person to suffer substantial emotional distress" and "actually cause[s] substantial emotional distress to the [the person to be protected by the order]"; and (6) which is not a "[c]onstitutionally protected activity."'" (*Parisi, supra*, 5 Cal.App.5th at p. 1227.) The purpose of the statute is "'"to protect the individual's right to pursue safety, happiness and privacy as guaranteed by the California Constitution'"' (*ibid*.) and to "provid[e] expedited injunctive relief to victims of harassment" (*Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1412).

3. No Abuse of Discretion

In challenging the Order, defendant argues the statements on her signs were not threatening but were merely a "hyperbolic" "expression of [her] opinion." She claims plaintiff's fears "were irrational" and no reasonable person would fear defendant's actions. We disagree.

We do not consider the signs to contain mere hyperbole. She has accused plaintiff of manipulating, kidnapping, terrorizing, and bullying student "warn[ing]" and "caution[ing]" those who view the signs, i.e., parents and plaintiff's colleagues. Nor does the speech have to contain a threat. Statements and conduct that """seriously . . . harasses""" are subject to a restraining order. (*Parisi, supra*, 5 Cal.App.5th at p. 1227.)

Defendant filed a federal lawsuit against plaintiff and others alleging similar criminal conduct. This is despite the fact that plaintiff had nothing to do with student's removal from defendant's custody. This supports a reasonable inference defendant is seeking to tarnish plaintiff's reputation and interfere with plaintiff's employment. In addition, defendant suffers from mental illness. These facts taken together support a finding both a reasonable person and plaintiff would suffer emotional distress.

We reject defendant's claim plaintiff must show irreparable injury. That is not one of the elements required to obtain a civil harassment restraining order. (*Parisi, supra*, 5 Cal.App.5th at p. 1227.)

Finally, we do not consider much of the legal authority defendant cites as it is inapt, irrelevant, or "'discuss[ed] in a vacuum.'" (*In re Marriage of Schnabel* (1994) 30 Cal.App.4th 747, 754.)

4. Freedom of Speech

Defendant claims the statements on her signs were constitutionally protected free speech under the United States and California Constitutions. She contends plaintiff, as a government employee, may not infringe on her free speech rights.

But defendant's free speech rights were not infringed. The court did not prohibit her from carrying her signs. It merely restricted her ability to do so within 100 yards of plaintiff. *R.D. v. P.M.* (2011) 202 Cal.App.4th 181 is instructive. There, the defendant, a former patient of the plaintiff psychologist, repeatedly called the plaintiff at

home, followed her, filed false police reports about her, filed an untrue complaint about the plaintiff psychologist with the licensing board, and posted several derogatory comments about the plaintiff on various Web sites. The trial court issued a restraining order requiring the defendant to stay 100 yards from the plaintiff and her family and barred the defendant from harassing, attacking, threatening, and stalking them.

The appellate court affirmed. In so doing it rejected the defendant's claim her conduct was constitutionally protected, stating: "To the extent the order limits [the defendant's] speech, it does so without reference to the content of her speech. The restraining order does not prevent [the defendant] from expressing her opinions about [the plaintiff] in any one of many different ways; she is merely prohibited from expressing her message in close proximity to [the plaintiff] and her family. [¶] The order does not mention or explicitly prohibit [the defendant] from engaging in any particular form of speech with respect to [the plaintiff]—including the sorts of speech about which [the plaintiff] had complained in her restraining order requests. It does not mention or prohibit [the defendant] from making statements on any subject or of any content, as long as she does so at a distance, and the statements' contents do not constitute illegal harassment within the meaning of [Code of Civil Procedure] section 527.6. It does not prohibit [the defendant] from contacting [the plaintiff's] licensing agency, from distributing flyers about [the plaintiff], or from posting derogatory criticisms of [the plaintiff] on Internet sites. It only restrains [the defendant] from doing those acts (or any others) within 100 yards of [the plaintiff] and members of her immediate family, their home, workplaces, vehicles, and schools. The order thus cannot be accurately characterized as a content-based prohibition on speech." (*R.D. v. P.M.*; *supra*, 202 Cal.App.4th at p. 191, fn. omitted.) Such is the case here.

The free speech protection in the California Constitution[4] does not mandate a different result. Defendant's speech was not prohibited. Nor is it correct that plaintiff is acting on behalf of the government in seeking the injunction just because she works for a public agency.

Further, free speech is not unlimited. Case law does not provide "that any injunction impinging upon the right of free expression constitutes an invalid prior restraint." (*Aguilar v. Avis Rent A Car System, Inc*. (1999) 21 Cal.4th 121, 143, 145 [injunction enjoining "continuing a course of repetitive speech that had been judicially determined to constitute unlawful harassment" properly issued].)

In addition, defamation is not constitutionally protected. (*Parisi, supra*, 5 Cal.App.5th at p. 1229.) Defendant presented no evidence plaintiff is in fact a terrorist or kidnapper. We are not persuaded the statements are protected as opinions or hyperbole. Further, the record makes clear plaintiff did not have anything to do with defendant losing her custodial rights. There is nothing plaintiff can do to return those rights to defendant. As plaintiff argues, defendant appears to have no motive other than to harass and frighten plaintiff. The restraining order was proper.

[4] Article I, section 2, subdivision (a) of the California Constitution states: "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press."

DISPOSTION

The order is affirmed. Plaintiff is entitled to costs on appeal.

THOMPSON, J.

WE CONCUR:

O'LEARY, P. J.

IKOLA, J.